

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SPENCER EARL ROGERS,

Petitioner,

v.

CHRISTIAN PFEIFFER,

Respondent.

No. 1:20-cv-00142-NONE-JDP

ORDER DENYING PETITIONER'S MOTION
FOR A STAY AND ABEYANCE AS
HAVING BEEN RENDERED MOOT

(Doc. Nos. 6, 8, 9)

In January 2020, Spencer Earl Rogers petitioned the court, through counsel, for a writ of habeas corpus under 28 U.S.C. § 2254. (Doc. No. 1.) Petitioner, who is currently incarcerated in state prison, was convicted of murder and sentenced to 25 years to life in the Kern County Superior Court in 2015. (*Id.* at 1, 7; Doc. No. 6 at 2.)

On April 24, 2020, petitioner moved for a stay and abeyance of his federal habeas petition under *Rhines v. Weber*, 544 U.S. 269, 277 (2005) so that he could seek to exhaust his unexhausted sentencing claim in state court. (Doc. No. 6.) Finding petitioner's reasoning and supporting showing to be insufficient to justify the granting of a stay, on June 11, 2020 the assigned magistrate judge recommended that his motion for a stay and abeyance under *Rhines* be denied. (Doc. No. 8.) Petitioner filed objections to those findings and recommendations on July 13, 2020. (Doc. No. 9.) On March 10, 2021, before the undersigned had issued an order addressing those findings and recommendations, petitioner's counsel filed a notice that on that

1 same date stating that the California Supreme Court had denied his state habeas petition presented
2 to that court and that his previously unexhausted sentencing claim had, as of that date, been
3 exhausted. (Doc. No. 12.) The following day, March 11, 2011, petitioner filed a First Amended
4 Petition in this federal habeas action, asserting only exhausted claims.

5 In light of the exhaustion of his previously unexhausted sentencing claim, petitioner's
6 April 24, 2020 motion for stay and abeyance has been rendered moot.

7 Accordingly:

- 8 1. Petitioner's motion for a stay and abeyance of his original habeas petition (Doc.
9 No. 6) is DENIED as moot;
- 10 2. Because the motion for stay and abeyance has been rendered moot, the
11 undersigned DECLINES to adopt the June 11, 2020 findings and
12 recommendations (Doc. No. 8);
- 13 3. This federal habeas action shall proceed on petitioner's First Amended Petition for
14 Writ of Habeas Corpus which was filed by his counsel on March 11, 2021 (Doc.
15 No. 14); and
- 16 4. This matter is referred back to the magistrate judge for proceedings consistent with
17 this order.

18 IT IS SO ORDERED.

19 Dated: **April 2, 2021**

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22 UNITED STATES DISTRICT JUDGE
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